REMARKS

In the Office Action mailed June 14, 2005, Applicants note with appreciation the allowance of Claims 19 and 26-31. In that same Office Action, Claims 12, 14, 15, 17, 18 and 25 are provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 5 and 6 of copending application Serial No. 10/493,608. Claims 12-18 and 25 are rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-7 of U.S. Pat. No. 6,867,162. Claims 12, 14, 15, 17, 18 and 25 are rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claim 4 of U.S. Pat. No. 6,764,978. Claims 12-18, 20-22 and 25 are rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-8 of U.S. Pat. No. 6,852,663. Claims 12-18, 21-23 and 25 are rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-7 and 14-19 of U.S. Pat. No. 6,586,566.

Rejections under judicially created doctrine of obviousness-type double patenting over Serial No. 10/493,608

Claims 12, 14, 15, 17, 18 and 25 stand provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 5 and 6 of copending application Serial No. 10/493,608.

The inventors listed on application Serial No. 10/493,608 are Edward Bohres; Ulrich Muller; Raimund Ruppel; and Eva Baum and the assignee is BASF Corporation. The inventors of the instant application are: Joerg Hofmann; Pieter Ooms; Pramod Gupta; Walter Schafer; and John Lohrenz, and the assignee is Bayer Aktiengesellschaft.

Applicants note that according to MPEP §804, "Before consideration can be given to the issue of double patenting, there must be some common relationship of inventorship and/or ownership of two or more patents or applications." Applicants respectfully contend that there is no such commonality in the instant case.

As there are no common inventors or owners, Applicants contend that the instant provisional rejection of Claims 12, 14, 15, 17, 18 and 25 under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 5 and 6 of copending application Serial No. 10/493,608 is improper and respectfully request the Examiner reconsider and remove it.

Applicants also wish to point out that the foreign priority date for application Serial No. 10/493,608 (published as US 2004/0249221 A1) is November 15, 2001, whereas the instant application was filed August 7, 2001 and claims priority to PCT/EP00/00727 filed January 31, 2000 which claims priority to a DE19991005611 filed February 11, 1999.

Rejections under judicially created doctrine of obviousness-type double patenting over U.S. Pat. No. 6,867,162

Claims 12-18 and 25 stand rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-7 of U.S. Pat. No. 6,867,162.

The Examiner indicates at page 5, paragraph numbered 15 of the instant Office Action that Claims 12-18 and 25 would be allowable with a timely filed terminal disclaimer over U.S. Pat. No. 6,867,162. Applicants submit herewith such Terminal Disclaimer.

Rejections under judicially created doctrine of obviousness-type double patenting over U.S. Pat. No. 6,764,978

Claims 12, 14, 15, 17, 18 and 25 stand rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claim 4 of U.S. Pat. No. 6,764,978.

The inventors listed on the face of U.S. Pat. No. 6,764,978 are: Georg Heinrich Grosch; Edward Bohres; Raimund Ruppel; Kathrin Harre; Eva Baum; Michael Stosser; Jeffery T. Miller; and Richard B. Prager and the patent is assigned to BASF Aktiengesellschaft. The inventors of the instant application are: Joerg

Hofmann; Pieter Ooms; Pramod Gupta; Walter Schafer; and John Lohrenz, and the assignee is Bayer Aktiengesellschaft.

Applicants note that according to MPEP §804, "Before consideration can be given to the issue of double patenting, there must be some common relationship of inventorship and/or ownership of two or more patents or applications." There is no such commonality in the instant case.

As there are no common inventors or owners, Applicants contend that the instant rejection of Claims 12, 14, 15, 17, 18 and 25 under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claim 4 of U.S. Pat. No. 6,764,978 is improper and respectfully request the Examiner reconsider and remove it.

Applicants also wish to point out that the filing date on the face of U.S. Pat. No. 6,764,978 is August 28, 2002, whereas the instant application was filed August 7, 2001 and claims priority to PCT/EP00/00727 filed January 31, 2000 which claims priority to a DE19991005611 filed February 11, 1999.

Rejections under judicially created doctrine of obviousness-type double patenting over U.S. Pat. No. 6,852,663

Claims 12-18, 20-22 and 25 stand rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-8 of U.S. Pat. No. 6,852,663.

The Examiner indicates at page 5, paragraph numbered 15 of the instant Office Action that Claims 12-18, 20-22 and 25 would be allowable with a timely filed terminal disclaimer over U.S. Pat. No. 6,852,663. Applicants submit herewith such Terminal Disclaimer.

Rejections under judicially created doctrine of obviousness-type double patenting over U.S. Pat. No. 6,586,566

Claims 12-18, 21-23 and 25 stand rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-7 and 14-19 of U.S. Pat. No. 6,586,566.

The Examiner indicates at page 5, paragraph numbered 15 of the instant Office Action that Claims 12-18, 21-23 and 25 would be allowable with a timely filed terminal disclaimer over U.S. Pat. No. 6,586,566. Applicants submit herewith such Terminal Disclaimer.

CONCLUSION

Applicants have amended Claims 15 and 28 to correct a typographical error. Such amendment is to be construed as "truly cosmetic" and is not believed to narrow the scope of the claims or raise an estoppel within the meaning of *Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd., et al.*, 535 U.S. 722 (2002). Applicants also contend that such claim amendments add no new matter and find support in the specification.

Applicants submit that the instant application is in condition for allowance. Accordingly, reconsideration and a Notice of Allowance are respectfully requested for Claims 12-23 and 25-31. If the Examiner is of the opinion that the instant application is in condition for other than allowance, he is invited to contact the Applicants' attorney at the telephone number listed below, so that additional changes to the claims may be discussed.

Respectfully submitted,

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